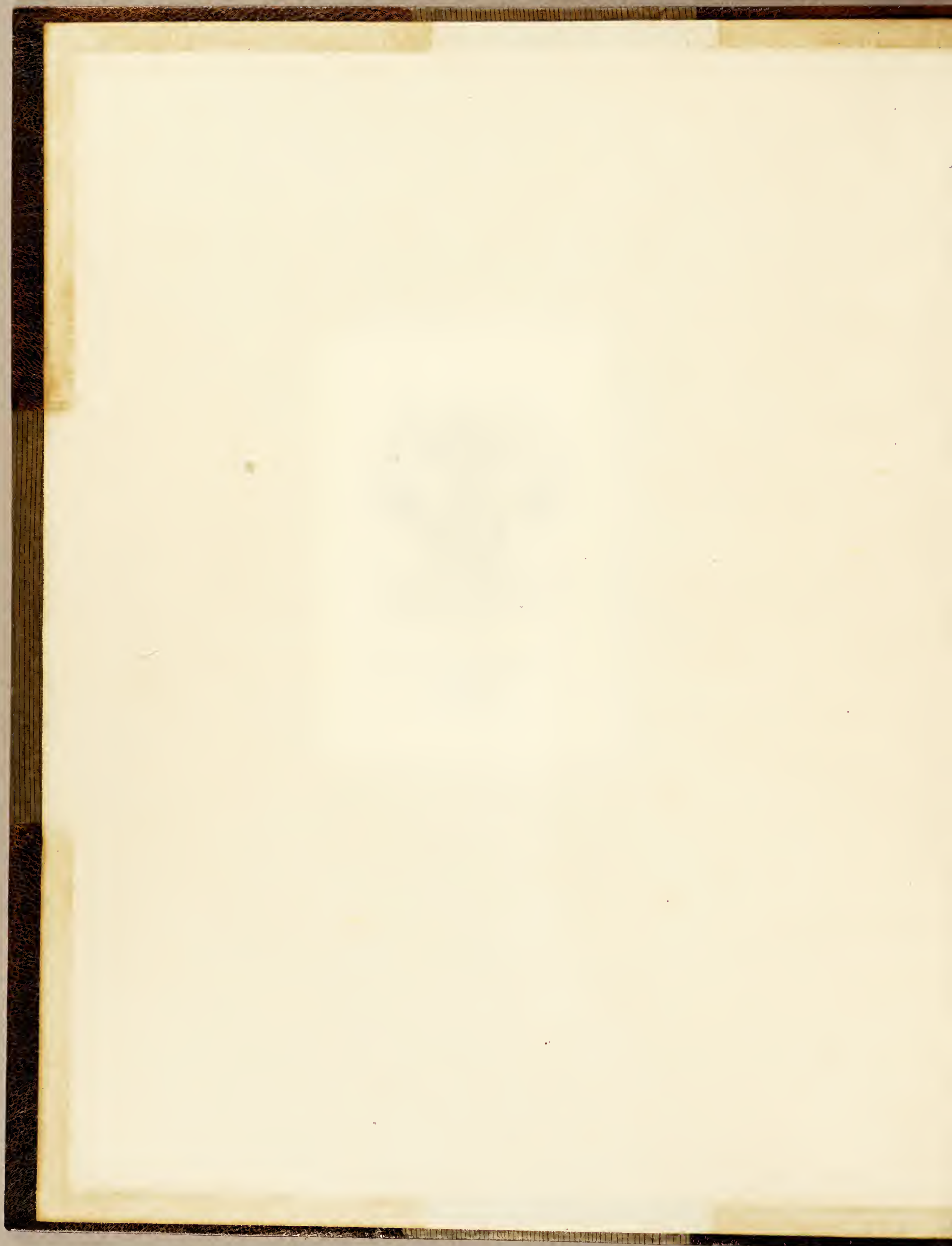






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A

LETTER
CONCERNING THE
PRIVILEGES
OF THE
ASSEMBLY
OF
J A M A I C A.

~~~~~  
EGO CERTE, QUIN CUM IPSA RE BELLUM GERAM; HOC EST, CUM  
REGNO, ET IMPERIIS EXTRAORDINARIIS, ET DOMINATIONE, ET  
POTENTIA, QUÆ SUPRA LEGES ESSE VELIT.

EPIST. BRUTI AD ATTICUM.

~~~~~  
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A

LETTER,
CONCERNING THE
PRIVILEGES, &c.



DEAR SIR,

THE unhappy Difference between the Governor and Assembly has already thrown the Country into so much Confusion, and may in its course have such fatal Consequences, that it demands the serious Attention of every one, who has any Property in Jamaica, or any Connexion with it. You and I have frequently in conversation discuss'd this Subject. I have, since I saw you, considered it with all the attention in my power; and I will, since you desire it, give you, as fully and clearly as I can, my thoughts upon it.

It is needless to give a detail of all those proceedings in Assembly which led to the commitment of Peirce Cooke and Lauchlen M Neil. They have been fully and fairly stated in an Address to the Freeholders published in the St. Jago Intelligencer. since the Dissolution of the last Assembly; and every one is possess'd of them. It will be sufficient here to say that the House Voted said Peirce Cooke and Lauchlen M Neil guilty of a breach of Privilege, for causing a Writ to be executed upon the Chariot of Mr. Olyphant, one of their Members, whilst the Assembly was sitting; That they were by Virtue of the Speaker's Warrant taken into Custody by the Messenger of the House; and that they were released by the Governor, as Chancellor, on the return of a Writ of HABEAS CORPUS, which he granted upon the Statute of 31 Car. 2. and that his determination thereon is made a Record of the Court of Chancery.

The Assembly consider their Privileges as derived to them from their Constituents; and that they are not Concessions from the Crown, but the Right and Inheritance of the People; They consider their Jurisdiction, IN CASES OF PRIVILEGE, as complete in their own Body, and in such cases, that no other Court can have any right to controul their determinations, or discharge their Commitments; and they therefore consider this Act of the Chancellor's as a dangerous violation of their Privileges, and such an encroachment upon their Jurisdiction, as would, (if submitted to) strip them of all Authority, and disable them from either supporting their own Dignity, or giving the People of this Colony that Protection against arbitrary Power, which nothing but a free and independant Assembly can give.

Yours

THE Question here is not whether the Assembly have done right or wrong in ordering those Men into Custody, (for I hope to shew, that they are the only competent Judges of their own Privileges) it is, whether the Governor, as Chancellor could legally discharge Men upon *an Habeas Corpus*, who were committed by order of the Assembly for a Breach of Privilege? But as their right of Privilege is founded on a presumption that the Assembly of this Island holds the same rank in the system of its own Constitution; as a British House of Commons does in that of our Mother Country; I will first endeavour to shew, from the most authentick Records and authorities, that the Privileges and the Jurisdiction in question, have ever been exercised and enjoyed by the House of Commons. The instances for my purpose to be found in the Journals of the Commons are innumerable; but I shall trouble you with a few only which are leading cases, and of such authority that they have ever since been admitted by the House of Commons as governing precedents, and by all Inferior Courts as Rules to direct their conduct in such Cases

THE first Case I shall mention happened in the time of Henry VIIIth. a time when, the Commons of England holding but an inconsiderable share of the Land, the Power of the House of Commons was no way comparable to what it is at this day. It is the case of George Ferrers in 34 Henry VIIIth. and I shall give it you at large, as it is in the Parliamentary History. It is taken from HOLLINGSHEAD, one of our antient Chroniclers, who is the more circumstantial about it; because, (says he) as the case has been diversly reported, and is commonly alledged as a precedent for the Privilege of Parliament; he had endeavoured to learn the truth thereof and to set forth all the circumstances at large, from those, who by their Instructions, ought best to know and remember it.

THE Author tells us the Member's name was ' George Ferrers, Esq; a Servant of the ' King, and elected a Burgess for the Town of Plymouth in Devonshire: That one day ' he was going to the Parliament House, he was Arrested by a Process out of the King's ' Bench, at the Suit of one White for the Sum of Two Hundred Marks, for which he ' stood engaged as a Surety for one Weldon of Salisbury, and carried to the Counter in ' Broad street. And that Sir THOMAS MOYLE, Knight, the Speaker, being informed of this ' acquainted the House with it, who forthwith ordered the Serjeant at Arms to repair to ' the said Prison, and demand the Prisoner.

' THE Serjeant went immediately to the Counter; but the Clerks and Officers there, ' were so far from delivering the Prisoner, that they forcibly resisted the Serjeant, broke ' his Mace, and knocked down his Servant. During the squabble, the two Sheriffs of Lon- ' don, ROWLAND HILL and HENRY SUCHCLIFF, came thither, to whom the Serjeant com- ' plained of this abuse, and of them required the delivery of the imprisoned Member: ' but they not only denied to deliver him, but treated the Serjeant very contemptuously, ' and he was forced to return without him to the House.

' THE Commons, after some debate on the Case, soon came to a resolution to send ' their Serjeant to the Sheriffs house, and require the delivery of the Prisoner; but before ' the Serjeant at Arms came with the second message, the Sheriffs had been told how hein- ' ously the matter was taken, and therefore they now delivered the Prisoner to him with- ' out any hesitation; but the Serjeant's orders went further: He charged the Sheriffs to ' appear personally before the House at eight o'clock the next morning, and bring with ' them the Clerks of the Counter, and such other Officers as were concerned in the affray.

' THE next day the Sheriffs &c. appeared at the Bar of the House, where the Speaker ' charged them with the Contempt and Misdemeanor, and commanded them to answer ' immediately, without allowing them any Council; though Sir Roger Cholmely, Record-

er of London, and others of the City Council offered to speak in the Cause. In the end the Sheriffs, and White the prosecutor were committed to the Tower, and the rest to Newgate; there they remained two Days, and then on their own Petition, and at the humble request of the Lord Mayor of London and other friends, they were discharged.

THE same Authority informs us that the King, being advertized of these proceedings, called before him the Lord Chancellor and his Judges, with the Speaker of the House of Commons, and several of the Chief Members of that House to whom he declared his Opinion to this Effect.

“ HE first commended their Wisdom in maintaining the Privileges of their House; which he would not have infring’d in any Point. He alledg’d that he, being the Head of the Parliament, and attending in his own person on the business thereof, ought in reason to have Privilege for himself and all his Servants in attendance on him; so that if FERRERS had been no Burgeſs but only HIS Servant; in respect of That, he ought to have Privilege, as well as any other. For I understand, (ſays he) that you enjoy the ſame Privilege, not only for yourſelves, but even for your Cooks and Horſe-keepers. My Lord Chancellor here preſent hath informed me, that when he was Speaker of the Lower Houſe, the Cook of the Temple was arreſted in London on an Execution upon the Statute of Staple; and, becauſe the ſaid Cook ſerved the Speaker in that office, he was taken out of Execution by the Privilege of Parliament. Likewise the Judges have informed us, that we at no time ſtand ſo high in our Eſtate Royal as in the time of Parliament; when we, as Head, and you as Members are conjoyn’d, and knit together into one Body Politick: So that whatſoever Injury is done or offer’d during that time againſt the meanest Member of the Houſe, is judged as done againſt our own Perſon, and whole Court of Parliament; the Prerogative of which Court, is ſo great, that, as our learned in the Laws informs us, all Acts and Proceſſes, coming out of any other inferior Courts, muſt for that time ceaſe, and give place to the higheſt.

“ And as touching the Plaintiff in this Cauſe, it was a great Preſumption in him, knowing our Servant to be one of this Houſe, and being warned of it before, ſtill to prosecute this matter out of time; and therefore was well worthy to loſe his Debt, which I don’t wiſh, and muſt commend your Equity that, having loſt it by Law, you have reſtored the ſame againſt him that was his Debtor; and if it be well conſidered, what an Expence it hath been to our ſelf and you all, as well as loſs of time, which ſhould have been employed in Affairs of our Realm, to ſit here near a fortnight, about this one private Cauſe; he may think himſelf better uſed than his deſert. This I hope will be a good Example to others to learn better manners, and not to attempt any thing againſt the Privilege of this High Court of Parliament, but to ſtay for a proper Opportunity. This is my Opinion; and if I err, I muſt refer myſelf to the Judgment of our Lord Juſtices here preſent, and the other Learned of the Laws.” UPON WHICH SIR EDWARD MONTACUTE LORD CHIEF JUSTICE, VERY GRAVELY GAVE HIS OPINION, CONFIRMING BY DIVERS REASONS, ALL THAT THE KING HAD SAID; WHICH WAS ASSENTED TO BY ALL THE REST, NO ONE SPEAKING TO THE CONTRARY.

THE next Caſe I ſhall Quote happened in the Reign of JAMES Iſt. when the abſurd and ſlaviſh Doctrines of DIVINE and HEREDITARY RIGHT and PASSIVE OBEDIENCE and NONRESISTANCE were firſt broached; Broached by that anointed Pedant, and, after the manner of Courts, adopted by all his Courtiers. To a King and a Court, who carried the Notions of Kingly RIGHT and Kingly POWER to ſuch a
B blasphemous

blasphemous height, and set so little Value on the Liberties of the People, nothing could be more obnoxious than the House of Commons; and accordingly we find many instances of the Affronts offered to that Body.

THE first day the House of Commons were sent for to attend that King in the House of Lords, SIR HERBERT CROFTS, one of the Members, coming up with others to hear the King's Speech, had the Door shut upon him; and one Bryan Tashe, a Yeoman of the Guard, violently repulsed Sir Herbert, saying GOODMAN BURGESS YOU COME NOT HERE.

A Book was written by the Bishop of Bristol, which contained what the House thought some Reflections upon their Proceedings.

SIR Thomas Shirley, Member for Stayning, had been committed Prisoner to the Fleet, on an Execution soon after his Return, and before the Parliament met.

THE King in short claimed a Right of having the Returns of Elections examined by his Chancellor; and it became then, for the first time a fashionable Opinion, that the Privileges of the Commons were only Concessions of the Crown, made upon the Speakers Request, at the meeting of every new Parliament.

LUCKILY for Posterity the House of Commons were in no disposition to subscribe to such Doctrines, to submit to Affronts, or to yeild up their Privileges to the dictates of an undeserving Monarch, or the attempts of a profligate Court. The Yeoman of the Guard was obliged to ask pardon upon his Knees at the Barr of the House, and to receive a Reprimand from the Speaker.

THE Bishop of Bristol, tho' a Member of the House of Lords, was obliged to confess his Error, and recant the offensive Passages in his Book.

THE Warden of the Fleet for taking Sir Thomas Shirley was sent to Goal; and not released, until he had first on his knees at the Bar of the House confessed his Error and asked Pardon. The House did more; not content with making Examples of these Offenders, they have left to Posterity a Noble Monument of their knowledge of the Constitution, and of their Virtue and Spirit in resisting the Attacks that were made upon it. It is an Apology from that House to King JAMES; in which the Rights and Privileges of the Commons are asserted in the most manly and spirited Terms. The Apology is too long to be inserted in this Place, I will only transcribe from it some passages that are apposite to my Subject.

“ AND contrarywise with all humble and due respect to your Majesty Our Sovereign Lord and Head, against those Misinformations we most truly avouch.

“ *First.* THAT our Privileges and Liberties are our RIGHT and DUE INHERITANCE, no less than our very LANDS and GOODS.

“ *Secondly.* THAT our Privileges and Liberties cannot be withheld from us, denied, or impaired, but with apparent Wrong to the whole State of the Realm.

“ *Thirdly.* AND that our making of Request in the Entrance of Parliament, to enjoy our Privilege is an Act only of manners, and doth weaken our Right no more than our suing to our King for our Lands by Petition; which Form, tho' new and more decent, than the old by PRECIPE, yet the Subject's Right is no less new than old.

Fourthly.

“ *Fourthly.* We avouch also that our House is a COURT OF RECORD ; and
 “ so ever esteemed.

“ *Fifthly.* That there is not the highest standing Court in this ~~Is~~land, that ought to
 “ enter into Competency, either for Dignity or Authority, with this high Court of Parlia-
 “ ment ; which with your Majesty’s Royal Assent gives Laws to other Courts, but from
 “ other Courts receives neither Laws nor Orders.

“ *Sixthly, and Lastly.* We avouch that the HOUSE OF COMMONS is the sole pro-
 “ per Judge of Return of all such Writs, and of the Election of all such Members as be-
 “ long unto it ; without which the Freedom of Election were not intire :

“ AND that the Chancery tho’ a standing Court under your Majesty, be to send out
 “ those Writs, and receive the Returns, and to preserve them ; yet the same is done only
 “ for the Use of the Parliament. OVER WHICH NEITHER THE CHANCERY NOR ANY
 “ OTHER COURT, EVER HAD, OR OUGHT TO HAVE ANY MANNER OF JURISDICTION.

It is impossible to read the History of the next Reign, that of CHARLES THE FIRST, especially the 14 or 15 first Years of it, without conceiving the highest Reverence for the Memory of those Great Men, who stood forth at that critical Period in defence of the Constitution. Never was there at any one time in the House of Commons, nor perhaps in any other Assembly, such a Number of Men, eminent for Learning, for good Sense, for Virtue and Courage, as appear’d in the House of Commons during the Four first Parliaments of that unhappy Prince : and it is owing to the Virtues and Abilities of an ELLIOTT, a COOK, a LITTLETON, a GLANVILLE, a PHILIPS, and many others Recorded in the Histories of those times, that the Subjects of Britain are not at this Day as much enslaved as those of France and Spain. Upon all Points of Controversy about the Constitution, much respect and difference will ever be shewn to the Sentiments and Opinions, and much more to the Determinations of those venerable Patriots : and I will therefore without any Apology give you the Sentiments of some of them upon the Breach of Privilege in Mr. ROLLS Case, in the 4th Year of CHARLES the 1st, extracted from the Parliamentary History.

A Complaint was made to the House of Commons by Mr. ROLLS, a Member of the House, and a Merchant, that his Goods were seized by the Officers of the Customs ; upon which the Officers of the Customs were sent for and examined by the House.

Sir JOHN ELLIOT, said

“ Three things are involved in this Complaint :

- “ 1st. The Right of the particular Gentleman.
- “ 2d. The Right of the Subject
- “ 3d. The Right and Privelege of the House.

“ Let the Committee consider of the two former ; and for the violation of the Liberties
 “ of this House, let us not do less than our Fathers. Was ever the Information of a
 Member committed to a Committee ? Let us send for the Parties.

“ Mr. DAWS, one of the Customers, being called in to Answer the Point of Privilege
 “ in taking Mr. ROLL’s Goods, being a Member of this House, said, He took Mr. Roll’s
 “ Goods by Virtue of a Commission under the Great Seal, and other Warrants remain-
 “ ing

“ ing in the Hands of SIR JOHN ELLIOT ; that he knew Mr. Rolls to be a PARLIAMENT
 “ MAN ; and that Mr. Rolls demanded his Privilege, but he did understand that this
 “ Privilege extended only to his PERSON, and not to his GOODS, &c.

“ SIR JOHN ELLIOT, The Heartblood of the Common Wealth receiveth Life from
 “ the Privilege of this House.

“ It was Resolved by Question that this shall be presently taken into Consideration,
 “ and being conceived a Business of great Consequence, it is resolved that the House shall
 “ be formed into a Committee for the Freedom of Debate.

“ MR. LITTLETON argued. All Privileges are allowed for the Benefit of the Common
 “ Wealth. The Parliament's privilege is above any other, and the Parliament ONLY can
 “ decide Privilege of Parliament, and not any other Court.

“ SIR ROBERT PHILLIPS. Thus you see how fast the Prerogative of the King doth in-
 “ trench on the Liberty of the Subject, and how hardly it is recovered ! He then cited
 “ many Precedents, wherein the Goods of a member of Parliament were privileged
 “ from Seizure in the Exchequer. In 12 ELIZ. it was resolved in Parliament, that
 “ twenty Days before, and twenty Days afterwards was the time of Privilege.

“ And the Committee of the whole House reported that they took into Consideration
 “ the Violation of the Liberties of the House by the Customs, and at last they resolved
 “ that a Member of the House ought to have Privilege of Person and Goods.

In these Authorities, taken from the Proceedings of Parliament, I have confined my
 self to the more antient Ones, omitting purposely those of latter times ; not because the
 modern Journals do not furnish any, but because they occur so frequently, and are so well
 known, that I think it needless to trouble you with them. Scarcely a Session passes with-
 out furnishing Instances of One or Both Houses of Parliament exercising the Power of
 Committing for Breach of Privilege, and of each House's judging of its own Privileges
 without Controul. Even in the very last Sessions of Parliament, we find by the Publick
 Papers that a Peeress in her own Right, having been arrested during the sitting of Parlia-
 ment, the House of Lords imprisoned all the Parties concerned in bringing the Action and
 Executing the Writ ; and obliged them to pay all Costs : And every one knows that in
 this Case the Privileges of both Houses are equal.

It is, then, clear I think, from the constant declarations and proceedings of Parliament
 that the House of Commons, hath at all times enjoyed and exercised the sole Right of
 judging of its own Privileges, and of punishing for Breach of Privilege.

I will now shew you by the most uncontroverted Law authorities, and by the concur-
 rent Testimonies of the Judges, and their declarations from the earliest Ages of the Eng-
 lish Constitution down to our own time, that neither the Court of Chancery, nor any
 Court in Westminster Hall can, or ever did, presume to discharge a Commitment by the
 House of Commons ; and that the Judges in England have always held and declared them-
 selves incapable of giving Judgment upon the Privileges of either House of Parliament as
 being EXTRA SPHERAM ACTIVITATIS.

“ THOMAS THORP being Speaker of the House of Commons 31. HEN. VI. was in time
 “ of Prorogation Arrested and Imprisoned at the Suit of RICHARD, DUKE OF YORK, up-
 “ on a Judgment obtained in the Exchequer.

“ THE

“ THE Commons, at the reassembling of that Parliament, wanting their Speaker, sent up some of their Members to make complaint thereof to the King and Lords, and to desire their Speaker's Release.

“ UPON this the Duke gives the Lords an Account of the whole matter.

“ WHEREUPON (saith the Parliament Roll) the Lords Spiritual and Temporal, not intending to impeach or hurt the Liberties, and Privileges of them that were common for the Commons of this Land to this present Parliament, but equally after the Course of Law to minister Justice, and to have knowlege what the Law will say in that Behalf.

“ OPENED and declared to the Justices the Premises; and asked of them, whether the said Thomas should be delivered from Prison, by Force and Virtue of the Privileges in Parliament or not?

“ To the which Question the Chief Justice in the name of all the Justices, after SAID Communication and mature deliberations had among them, answered and said that they ought not to answer to that Question.

“ AND then follows

“ The Judges Recognition

“ 1st. FOR it hath not been used before time that the Justices should in anywise determine the Privileges of this high Court of Parliament.

“ 2d FOR it is so high and mighty in its Nature.

“ 3d. THAT it may make Law.

“ 4th. And the Determination and Knowledge of that Privilege belongeth to the Lords of the Parliament and not to the Justices.

“ THESE several Cognitions so materially weighty in themselves, being published and declared by all the Judges of England, and that before the Parliament, as a fixed and standing Rule of Law, and as a Memorial to all Posterity's enrolled among the Records of the said High Court of Parliament, for ever to endure.

AND this declaration has in all succeeding times been of such Weight and Authority, that I will venture to assert, there is not A SINGLE INSTANCE where the Court of Chancery or any inferior Court ever presumed to discharge a Commitment of the House of Commons for Breach of Privilege. And it will appear, in the two following Instances where it was attempted, that by the Opinions of the most eminent Lawyers, by the Opinion of the Lord Keeper of England and all the Judges, and by a solemn Judgment of the Court of Kings Bench, none of those Courts CAN DISCHARGE OR TAKE COGNIZANCE OF, the Commitment of the House of Commons.

THE next Case I shall mention is taken from the Debates in Parliament; a Case, which has been extremely well remarked upon in a Pamphlet lately Published, intituled A VINDICATION OF THE PROCEEDINGS OF THE ASSEMBLY, &c. but it is too apposite to be omitted here; especially as it was, I think, the first attempt made since the above celebrated Determination in Thorp's Case, of drawing the Jurisdiction and Judgment of the House of Commons AD ALIUD EXAMEN.

In 1680. A motion was made in the House of Commons, in behalf of Judge RAYMOND, that one SHERIDAN in Custody of the Serjeant at Arms by order of the House, had applied for his HABEAS CORPUS, which the Judge denied, BECAUSE HE WAS COMMITTED BY ORDER OF THE HOUSE, desiring the opinion of the House. Upon this occasion SIR WILLIAM JONES, a Member of the House, and as able a Lawyer as any in England, asserted in the House; " That there is nothing in the HABEAS CORPUS ACT, that doth reach, or can be intended to reach to any Commitment made by either House of Parliament. The preamble and all parts of the ACT do confine the Extent of the ACT to cases Bailable, and direct such courses for the execution of the ACT as cannot be understood should relate to any commitment made by either House. A commitment of this House is always in the nature of a Judgment, and the ACT is only for cases bailable which commitments upon Judgment are not.

HERE, then, is a Judge refusing even to grant a Writ of Habeas Corpus for a commitment of the House of Commons, and this not above two years after the passing of the Habeas Corpus ACT: and Sir William Jones declaring to the House that, that ACT was not intended nor could not be understood to extend to commitments by either House of Parliament. The opinions of these eminent Lawyers are of great authority from the characters and reputation of the men; but they receive much additional weight from a consideration of the Time in which they were given: For the Law presumes that the intention of an ACT of Parliament is best known from those who lived at or near the Time in which such ACT passed. And you will accordingly find this authority supported by the opinion of the Lord-keeper, and all the Judges in England, in the next case I am going to mention; that is, the celebrated case of the AYLESBURY men.

As this was the first Time that the Jurisdiction and the power of commitment of the House of Commons ever was made a question of in Westminster Hall; as the question in the Course of it, brought on a contest between the House of Lords and the Commons; as it was discussed both in Parliament and in Westminster Hall, by the ablest Lawyers and the greatest men in England; and as there was a solemn Judgment upon it in the King's Bench, which is now a Record and a standing rule in all cases of the same kind; I will with your leave insert the case.

" A complaint was made by the Honourable House of Commons, that, since their last Resolutions in the cause of Ashby and White, several actions had been brought by J. PATY, J. OVIAT, J. PEYTON, H. BASSE, and D. HORNE, and prosecuted by R. MEAD against the Constables of Aylesbury, in breach of the Privileges of that Honourable House; whereupon they were pleased to order the Matter of the said complaint to be heard at the Bar of their House, and order'd the Persons concern'd to attend there, and appointed a day accordingly.

" The parties appeared (all but Mead) when the Witnesses were examined, and they severally call'd to the Bar of the House, and then withdrew, and upon full hearing, the House were pleased to order their Speaker to issue out Warrants, for committing them (being taken into Custody) to Her Majesty's Goal of Newgate.

" In the Michaelmas Vacation 1704 they prayed an HABEAS CORPUS upon the Statute 31. CHA. 2d; upon the return of which all the Judges met, and advised whether they were bailable by that Statute? who were unanimously of Opinion THAT THEY WERE NOT; and accordingly they were remanded. And in Hilary Term following they moved the Court of Queen's Bench for an Habeas Corpus, by the Com-
" mon

“ mon Law, which was granted; upon the Returns whereof the Judges of the Queen’s
 “ Bench desired the Assistance of the rest of the Judges whether they might be discharged?
 “ who were all of Opinion, except the LORD CHIEF JUSTICE HOLT, that they ought
 “ to be remanded.

BUT as it was argued in the Queen’s Bench by Council, and afterwards the Judges delivered their Opinion *SERIATIM*, I will, in order to shew the matter more clearly, extract such parts of the Arguments of those Judges, upon whose Opinions the Court founded its determination, as are applicable to the Case in Question here. I make no Extracts from the Arguments of Lord Chief Justice Holt, as his Opinion in that Case is not Law, having been over ruled by his Brethren upon a Consultation with all the Judges of England.

“ Mr. Justice GOULD and Mr. Justice POWIS said, they would chiefly insist upon *Legem et Consuetudinem Parliamenti*; but they would first maintain the Form of the
 “ Warrant.

“ Objection. That this is a Commitment by the Speaker only; for that the Warrant
 “ does not run, ordered by the Knights Citizens and Burgeses in Parliament assembled,
 “ according to the Precedent in my Lord Shaftsbury’s Case 1. Mod. 144.

“ Answered by the Judges.

“ THAT it is good, being according to their Form; and that it must be presum’d the
 “ Speaker’s Warrant was by order of the House.

“ Objection. This Commitment is for bringing their Action at Law, and for taking
 “ the due Course of Law

“ Answer. WHAT is Privilege, but dispensing with the Law? The generality of
 “ Breaches of Privilege are for taking the due Course of Law. If you go to scanning the
 “ words of a Commitment, who knows not that most Commitments, that would hold
 “ for such, do express the Cause but shortly, and but just give a hint? And the Law does
 “ presume that the higher Courts do understand what they do, and therefore are not tied
 “ up to such strictness as inferior Courts.

“ Objection. SHALL the House of Commons take a despotick power to regulate how
 “ Actions shall be brought, and what Actions shall not be brought?

“ Answer. CAN we suppose that high Court would stop the Progress of the Common
 “ Law of England? ’Tis highly dishonorable to have such thoughts; and no Body dares
 “ think so, or will presume to say so; and People would laugh at one that should say,
 “ the House of Commons will take away the Liberties of the People.

“ THERE is no better way to determine the Jurisdiction of either House of Parliament,
 “ than by Usage and Custom; as the Bounds of Parishes are. That there is no Pre-
 “ cedent or Case, nor so much as an Opinion, yet Cited, that the Courts of Westminster
 “ Hall have a Power to Judge of the Authority of the House of Commons; or that the
 “ Orders and Commitments of the House of Commons, can be discharged in Westmin-
 “ ster Hall; nor were they ever before attempted to be discharged here upon such a Com-
 “ mitment by the House of Commons; which is a good Argument, according to my
 “ Lord Coke’s Rule, that we want Power to do it. It would be impossible for us to
 “ Judge

“ Judge of the Privileges of the House of Commons; for there are no printed Books of
 “ their Privileges, nor is there any means, by which we can attain to the knowledge of
 “ them; but their Customs and Privileges are kept, as Arcanas, in the Rolls and Records
 “ of their own House; and their Privileges depend altogether upon Precedents in Parlia-
 “ ment. They do judge it as a Contempt and Breach of their Privileges; and who shall
 “ say nay? They are proper Judges of the Matter; and upon the return it appearing
 “ they were committed by the House of Commons, our Jurisdiction ceases. So far
 “ Gould and Powis.

MR. “ Justice POWELL, said.

“ That the Commons have a Judicature, not by the Common Law; but do Judge of
 “ Breaches of Privilege and Contempts to their House, *Secundum Legem et Consuetudi-*
 “ *nem Parliamenti*: 4 Inst. 23. and by this Law these Persons are Committed, and now
 “ are brought to be discharged by the Common Law. The resolutions of the Commons
 “ upon the Breach of Privileges, is a Judgment, and the Commitment an Execution of it,
 “ which cannot be controuled, for this would be to draw it *AD ALIUD EXAMEN*, and then
 “ the Commons would not be Supreme Judges of their own Privileges.

“ That this Court may keep other inferior Courts within their Jurisdiction, but not the
 “ House of Commons: for no prohibition was ever granted to that Court, tho’ they ex-
 “ ceed Jurisdiction. So if the House of Lords do exceed, or take Cognizance of matters
 “ in the first instance; no prohibition would lie: for no inferior Court can prohibit a su-
 “ perior; and no prohibition was moved here; nor could we have granted it; for the
 “ House of Commons is superior to all ordinary Courts of Law.

“ In the 4th. Inst. 50, it doth not belong to the Judges to Judge of any Law, Privileges,
 “ or Customs of Parliament: for the Laws Customs and Privileges of Parliament are better
 “ to be learned out of the Rolls of Parliament and other Records, and by Precedents and
 “ continual Experience, than can be expressed by any one Mans Pen

“ In 4 Inst. every Court of Justice hath Laws and Customs for its direction; some by
 “ the Common-Law, some by the Civil and Cannon-Law, some by particular Laws and
 “ Customs: so the High Court of Parliament *SUIS PROPRIIS LEGIBUS, ET CONSUETU-*
 “ *DINIBUS SUBSISTIT*: That Judges ought not to give any opinion of a matter of Parlia-
 “ ment; because it is not to be decided by the Common Laws, but *Secundum Legem et*
 “ *Consuetudinem Parliamenti*; and Coke says. *Ista Lex ab omnibus est querenda a multis*
 “ *ignorata, a paucis cognita*. Now who shall Judge this no Breach of Privilege; when
 “ the House of Commons, who are the proper Judges of their own Privileges, have ad-
 “ judged it to be a Breach of their Privileges?

“ The Judgment of the Court, as it was made up, upon the Roll by the directions of my
 “ Lord Chief Justice Holt, was *QUIA COGNITIO CAUSÆ CAPTIONIS ET DETENTI-*
 “ *ONIS PREDICT. NON PERTINET AD CURIAM DOMINÆ REGINÆ, IDEO REMITTITUR*.
 Which is as strong and conclusive against the Jurisdiction of the Courts in Westminster-
 Hall in Cases of Commitment by the House of Commons for Breach of Privilege, as words
 can make it. It has so much the force of a Law with the Judges in Westminster Hall,
 and is of such Authority, that, in the Case of the Honorable Alexander Murray committed
 by Order of the House of Commons about 12 or 14 Years ago, (the only case of *Habeas*
Corpus ask’d for on a Commitment of the House of Commons, since the determination in
 that of the Aylesbury Men) the Cause of Commitment return’d by the Goaler was only an
 Order of the House of Commons, without any Crime alledg’d; and the Judges said *THEY*
COULD NOT QUESTION THE AUTHORITY OF THAT HOUSE, OR DEMAND THE CAUSE
OF THEIR COMMITMENT, OR JUDGE THE SAME; and therefore they refused to dis-
 charge the Prisoner, and so remanded him.

NOW

NOW if we are to look for precedents from the Mother-Country to support our Chancellor's Conduct in the Case in question here; you see that all the Precedents from thence are against him. Yet is it most surprising to hear with what confidence those, who are for giving up our Privileges, assert the Justice and Legality of the Chancellor's determination, without a single authority to support their assertion. But nothing has surprised me more, than to hear grave men, and some who ought to know better, leaning upon the single opinion of Lord Chief Justice Holt, as on a sufficient authority; altho' they must know it is none, that it was over ruled, and that the very reverse of his opinion was declared to be the Law. To such shifts are men reduced, who have a bad Cause to defend! But what will become of these Antiprivilegiaries, when even this Twig, which they have laid hold of, and are forced to lean upon, is taken from them? If it can be shewn that even Lord Chief Justice Holt's opinion, (which they consider of higher authority than that of all other Judges, higher even than an adjudged Case) is, in that part of the Aylesbury Men's Case, which mostly resembles ours, diametrically against them, and against our Chancellor's determination; will they be modest enough to give up the argument?

That it is so will appear upon a review of that Case. Every body knows that the Writ of Habeas Corpus is of Two kinds. There is a Writ of Habeas Corpus which the Subject is intitled to by Common Law, and which is grantable only in Term time by the Court; and there is a Writ of Habeas Corpus by the Statute of 31. Car. IId. which the Chancellor or any of the Judges is at all times to grant upon Application. The latter is the only Habeas Corpus that a Chancellor can grant. Now the first Application for an Habeas Corpus in the above Case of the Aylesbury Men was out of Term to THE LORD KEEPER OF ENGLAND, upon the Statute of 31. Car. IId. This is therefore the Application, which mostly resembles that, which was made to the Chancellor here, by Cooke and McNeil; and it does, indeed, most exactly resemble it. But the Lord Keeper of England upon the return of the Writ thought the matter of such consequence, that he did not choose to rely upon his own Judgment, nor did he choose to depend upon any help, which he could have from the arguments of the Prisoners Council (considering these perhaps as Men, whose duty it was to mislead him) but he call'd to his assistance all the Judges of England, my Lord Holt one of them. All the Judges met, and after the most mature deliberation among themselves upon the question whether the Prisoners were bailable by that Statute? declar'd it unanimously as their Opinion THAT THEY WERE NOT, and they were accordingly remanded.

I have before shewn it to have been the Opinion of Judge Raymond and Sir William Jones, very soon after the passing the Habeas Corpus Act, that, that Act did not reach the Commitments by either House of Parliament. Here then is that Opinion establish'd into Law by a solemn Determination of the Lord Keeper and all the Judges of England in 1704.

By what Authority then, or upon what Precedents could the Chancellor, on an Habeas Corpus by the Statute of 31. Car. IId. discharge the Commitment of the Assembly? He could find no Precedents at home, he could find none here; for no Chancellor or Judge before him in this Island ever presumed to question the Commitments of the Assembly, and much less to discharge them. Will it be asserted that the Assembly of Jamaica have not the Privileges of the House of Commons? It is asserted; and the Advocates for this doctrine go further, and say that We have no Privilege but what the King is pleased to allow us. I will endeavour to prove that, if the Assembly have not the Privileges of the House of Commons, they have no Privileges; for that the King cannot by Law grant them

D.

them Privilege. I will endeavour likewise to shew that, if the Assembly do not hold their Privileges upon the same independent terms with the House of Commons, the People of this Colony have no defence against the assaults of Arbitrary Power, no Security for their Lives, their Liberties, or their Properties.

It is asserted by those who argue against Privilege that the King of Great Britain, as being stiled Lord of Jamaica and the Colonies, may give to his Subjects in those Colonies what measure of Liberty, and what form of Government he pleases: an assertion most Absurd, False, and Wicked: These Colonies are not like his Majesty's German Dominions, the PROPERTY of Our Sovereign. God forbid, they should ever become the Property of any King or Potentate upon Earth! They are part of the British Empire, over the whole of which His Majesty presides as the Head, and so stiled and declared in many British Acts of Parliament. Their Inhabitants are all British Subjects intitled to the Laws of England, and to its Constitution, as their Inheritance; possessing their Rights and Privileges by as free and certain a Tenure, as that by which they hold their Lands, as that by which the King holds his Crown. Never was it pretended, till now, that a British Subject became a Slave; or forfeited any of the Rights and Privileges of an Englishman by settling in a British Colony. Even in the Reign of Charles the II. when Arbitrary Power, under the Shelter of unlimited Prerogative, was making large strides over the Land, there was no difference made between the Rights and Condition of Subjects in the Colonies and those in England.

* THERE is a remarkable Case in that Reign which sets the doctrine in a clear Light. It was an Action brought against a Governor of Barbadoes for some Arbitrary proceedings against a Gentleman there: the Governor's proceedings could not, it seems, be justified by Law, and he therefore pleaded his Instructions. After passing thro' the lower Courts, the Cause was brought by Writ of Error into the House of Lords; and in the pleadings of the Lawyers the Constitution of the Colonies and the Rights of the Colonists, are fully and finely set forth. It was argued that the Colonies could not be consider'd as conquer'd Countries; since they were part of the English Empire, settled intirely by Englishmen, who neither did nor could forfeit any Right by settling in a Colony: that they had a right to the Laws of England: that the Judges there were obliged to determine according to Law: that Instructions to a Governor could only be understood as Directions in matters of State and Government; and could not be admitted in Judicial Determinations, without Oppression and Injustice to the Subject. And this doctrine was so fully admitted, that it was not denied even by the Lawyers on the other side.

As a further proof that this was the general sense of the Nation in that Reign, it is notorious, that one of the Articles of Impeachment against the great Lord Chancellor Clarendon was, THAT HE HAD INTRODUCED AN ARBITRARY GOVERNMENT INTO HIS MAJESTY'S PLANTATIONS: And it is one of the Crimes for which that great Minister and Favourite was banish'd by Act of Parliament, and that, indeed, which in the Vindication he has left of himself he has said least to palliate or justify.

BUT our Rights will best be understood by a review of the Constitution of this Colony; of its beginning and progress to this time. Every Body knows that Jamaica was conquered from the Spaniards by a Fleet and Army sent out by Cromwell, under the Command of Admiral PENN and General VENABLES. After the Reduction of the Island, the Spaniards either quitted it, or were all driven out; so that it remained inhabited only by the Soldiers who had conquered it; and it was Govern'd of course by Military Laws, until some time after

* Cases in Parliament. Sir Richard Dutton Plaintiff, versus R. Howell &c.

after the restoration of King Charles the Second, when the measure of making it an English settlement by sending out a Colony was adopted. The King in order to induce his Subjects to transport themselves and Families hither and become settlers, put out a Proclamation offering them many Encouragements, and particularly, THAT ALL CHILDREN OF ANY OF OUR NATURAL BORN SUBJECTS OF ENGLAND TO BE BORN IN JAMAICA SHALL FROM THEIR RESPECTIVE BIRTHS BE, REPUTED TO BE, AND SHALL BE FREE DENIZONS OF ENGLAND; AND SHALL HAVE THE SAME PRIVILEGES TO ALL INTENTS AND PURPOSES AS OUR FREE BORN SUBJECTS OF ENGLAND.

NOR could any thing less than this have been sufficient to induce the Free Subjects of England to quit their Country and Friends, and settle themselves in a remote and inhospitable Climate. In pursuance of the Royal Promise in this Proclamation, and as soon as the Colony was numerous and considerable enough to make it an object for Civil Government, a Civil Government was instituted, the same which has subsisted in it ever since. The King could not give any other form of Civil Government or Laws than those of England, and accordingly we shall see that the form of Government here resembles that of England, as nearly as the Condition of a dependant Colony can be brought to resemble that of its Mother Country, which is a Great and an Independent Empire.

HERE, as in England, we have CORONERS, CONSTABLES and JUSTICES OF THE PEACE, We have a Court of COMMON-PLEAS, a Court of EXCHEQUER, and a Court of KINGS BENCH; we have a Court of CHANCERY, and we have a Court of ORDINARY for the Probate of Wills and granting Administrations. The Coroner is elected by the People, the Constables are appointed by the Justices of Peace, the Justices of the Peace and the Judges of all the Courts act by Authority of the King's Commission under the Broad Seal. The different orders of Judicature here, then are exactly like those in England, subsisting by the same Authority, and instituted for the same purposes. There is the same Resemblance preserv'd in the forms of our Legislature. It is composed of Three Estates, of which the Governor (as representing the King) is Head. Having no order of Nobility here, the place of a House of Peers is supplied by a Council of 12 Gentlemen appointed by the King, which in the system of our Legislature forms the upper House. The lower House is composed, as in Britain of the Representatives of the People elected by the Freeholders; and these Three Bodies form a Legislature, which exercises the highest Acts of Legislation, for it raises Money, and its Laws extend to the Life, Liberty, and Property of the Subject, several having suffer'd Death upon Laws pass'd by our Legislature, even before they have received the Royal Assent. These Three Estates ought by the Constitution to be perfectly free in their deliberations and perfectly independent of Each other. In their Legislative capacities they are intitled to, and have ever enjoyed, the same Privileges with their Respective Bodies in the Mother Country which they are intended to Represent: and they do preserve, I believe, as nearly as they can, the same Forms. But the Two first Branches cannot from the Nature of things be made to resemble, those they are supposed to stand for, as nearly as the Assembly does. For Example. The King appears PERSONALLY and in full Majesty at the Head of his Parliament; His Consent gives full Life and Duration to such Bills as are offer'd to him by his Parliament: and he has in himself full Power to approve or reject them. The Governor, tho' he Represents the King in our Legislature, yet acts by a delegated Power, and exercises only such parts of the prerogative as the King is pleased to intrust him with. Thus too, altho' his consent is necessary here to the enacting Laws, and his consent does give them full force while they last, yet it can give them but a Temporary Existence, until the King's pleasure is known: it is from his Majesty's consent that they receive their full Life and Duration. Our Governor is also bound to follow Instructions in his Legislative Capacity; and in this Capacity acts, indeed, but ministerially, and is not therefore, nor can from the nature of things be Independent.

THE members of the COUNCIL, or upper house, do not hold their places as an inheritance, nor yet for life, but at pleasure, liable to be displaced upon any occasion by a Governor; and they have often been displaced upon very slight pretences. This body then is but a very imperfect representation of a House of Peers; and, because of the uncertain Tenure, by which they hold their places, wants much of that independence which is proper to every branch of the Legislature in a free Country. They want much too of the power of the upper house: But they have, perhaps, as great a share of it, as it would be safe to trust to so flux and dependant a body. In their Legislative capacity however they have a constitutional right to the Privileges of Parliament; since in our Constitution their consent is necessary to the enacting Laws.

THE ASSEMBLY, or lower-house, has an exact resemblance of that part of the British constitution, which it stands for here: It is, indeed, an Epitome of the House of Commons. Called by the same authority, deriving its power from the same source, instituted for the same ends, and govern'd by the same forms, it will be difficult, I think, to find a reason, why it should not have the same privileges and the same powers, the same superiority over the Courts of Justice, and the same rank in the system of our little community, as the House of Commons has in that of Britain, especially since all the Courts of Justice here are governed by the same Laws, enjoy the same Privileges, exercise the same Powers, and hold the same rank with those they respectively represent. Thus for example. The Coroner, the Justice of the Peace, the Judges of the Court of King's Bench, Common Pleas and exchequer, the Chancellor and the Ordinary, have all the power of committing for contempt. It is a power that every Court has, as essentially necessary to its existence; for no Court could subsist without it: Thus the Grand Court can, and frequently does, Privilege a Juror from arrests; and will even discharge his Horse, if taken in execution during his attendance upon the Court; and the same Court does frequently grant protections to men, during the sitting of the Court. The Court of Chancery doth often grant Protections to the Suitors of that Court, I believe, for an indefinite time: and if any Officer were to execute a Writ upon a Person so protected: the Court which granted the protection would most certainly commit the offender. Now if a Person so committed by the Court of Chancery were to apply to the Grand Court for an Habeas Corpus; and the Court upon the return of the Writ were to discharge the Prisoner, giving for reason that they could find neither in any Act of Parliament nor Act of Assembly any thing to justify the commitment, and so record their Judgment and reason: The Court of Chancery would, I believe, consider this as a violent attack upon its jurisdiction and authority; and resent it as such: and yet I believe the power of commitment by the Assembly for breach of Privilege is as well founded, in Law at least, as the Chancellor's; and I will venture to say, it is founded upon as many Acts of Parliament and Acts of Assembly. The Court of Chancery in England exists only by custom, as every Court of Conscience in England does, and I believe it will be found that no Court of Chancery was ever erected here by Law or otherwise, but the King in his Commission to the Governor, mention'd him as Chancellor and the Island seeing the necessity of Such a Court, has submitted to it.* But if the Grand Court should go further; and, as a reason, say the Commitment was not warranted by any INSTRUCTION FROM THE KING: The Court of Chancery would, I believe, in

* The King, I think, can only constitute Courts of Law and Trials by Jury, that being the English Constitution.

The Court of Ordinary is defective in its Power, for it can enforce none of its orders. They are enforced in England by Ecclesiastical censures, which, I believe, the Bishops would not consent to trust a Governor with, and the King could not grant such a Power. Indeed the whole Power of the Governor, as ordinary, seems to flow from a Law of this Island: how otherwise he derives his Power, whether by Patent from the Crown I know not, but this demonstrates how very cautious the Crown in settling our Constitution was, of exerting or extending its Prerogatives, even in those early Times.

in this case also go further; the Judges would be dismiss'd; there would, I make no doubt, be an information brought against them; and they would be taught by the sentence of more upright Judges how criminal it is for any Judge to suffer himself to be govern'd in his judicial determinations by INSTRUCTIONS, or by any other rule, than the Laws of the Land.

It appears, then, that the Inferior Courts do enjoy and exercise without interruption certain Privileges; some of them that of protecting men from Writs of Arrest or Execution, and all of them that of committing for contempt: Let us consider by what Tenure they hold these Privileges, and from whence they are derived. Are they derived from the King, as concessions from the Crown? By no means. The King has no power to grant such Privileges; he has no prerogative to protect any man from Arrests, nor to commit any man to Prison by his command; and this I will endeavour to shew.

EVERY man has a right by the Constitution to prosecute his Debtor by an action at Law, to Sue out his Writ of Arrest, or Execution, and take the body of his Debtor, unless he pays the Money. All Privilege from Arrests is therefore a dispensing with the Law; and the generality of breaches of Privilege are for taking the due course of the Law: and so it was said by the Judges in the case of the Aylesbury men. Before the Revolution, the Kings of the Stuart race, did often assert a right of dispensing with the Law, and did attempt to do so: but this ill founded claim was continually denied, and their arbitrary exertions of such a power constantly and strictly opposed by Parliament. The frequent exertions of this and some other un-constitutional powers were the cause of all the troubles of that obstinate, ill fated family; and at last brought on their ruin, in the expulsion of James the II. at the Revolution. By the very Act which excluded the Male Line of that family, and which transferring the Crown into another branch, settled it upon the Prince and Princess of Orange. It is declared that, "Whereas the late King James the II. by the assistance of
"divers evil Councillors, Judges, and Ministers employed by him, did endeavour to sub-
"vert and extirpate the Protestant Religion and the Laws and Liberties of this Kingdom,
"by assuming and exercising a power of dispensing with, and suspending Laws, and the ex-
"ecution of Laws, without the consent of Parliament, &c. The Lords Spiritual and Tem-
"poral, and Commons, pursuant to their Elections, being now assembled in a full and free
"Representative of this Nation, do in the first place, (as their Ancestors in the like case
"have usually done) for the vindicating and asserting their antient Rights and Liberties
"declare.

First, "That the pretended power of suspending Laws, or execution of Laws by regal
"authority without consent of Parliament is illegal.

Secondly. "THAT the pretended power of dispensing with Laws, or the execution of Laws
"by regal authority, as it hath been assumed and exercised of late is illegal.

In the 9th Article it is said,

Ninth. "THAT the freedom of Speech and debates, or proceedings in Parliament ought
"not to be impeached or question'd in any Court out of Parliament.

"And in another place of the same Act it is said,

"And they do claim, demand, and insist upon, all and singular the Premises, as
their undoubted Right and Liberties.

UPON which I shall only observe that this is not a new Law, creating any new Privilege in the People, or clipping the Prerogative ; but a Solemn Declaration and Assertion of the Peoples Rights, and what the Law and Constitution of England had ever been ; and it cannot now be pretended, that by the Constitution, as it was settled and declared at that Glorious Period, the Revolution in 1688, the King hath any Prerogative to dispense with Laws. It follows, then, that Privilege from Arrest being a dispensing with the Law, the King has no Prerogative to grant Privilege. The Truth is, the King neither does, nor can grant Privilege, any more than he can make Law : but the Constitution, which allows the Subject a Right in Law of bringing an Action against his Debtor, and of Arresting or Taking his Body, does in certain Cases, and in Favour of certain Offices and Services, dispense with this Law. Hence, then, is derived the Privilege that has ever been enjoyed by the King's Servants, and the Two Houses of Parliament, and hence those Privileges and Powers of granting Protections, which are exercis'd by the Courts of Justice.

THE King by his Prerogative has the sole Right of convening a Parliament : but that Parliament being met, their Privileges are their own. By the Law of the Land, when the King calls any Person to his Service, he cannot give him any Privilege ; he gives him only an Office, in which by Law, he is intitled to Privilege. The King by his Prerogative may appoint as many Courts as he pleases ; but they must be LAW-COURTS ; for the King cannot institute any new Jurisdiction. The Judges Commissions (as all Commissions Civil and Military do) flow from the King : but he can neither amplify nor abridge their Power or Authority ; nor prescribe to them their Forms of Proceeding, or their modes of Administring Justice. These are all chalk'd out to them by the Law, and the antient usage of their Respective Courts, within the Limits of which they are bound to move : and it would be Criminal in a Judge to suffer himself to be Govern'd by INSTRUCTIONS in judicial determinations, so Criminal, that many Judges have been censured and punished, and some in Richard the Ist's. time hang'd for it.

As the King cannot confer Privileges ; so he has no Prerogative of creating any new Power for Imprisoning the Subject, or abridging him of his Liberty. A Commitment per MANDATUM DOMINI REGIS is not good, and must be discharg'd ; because the King does not act in Person, but hath committed all his Power judicial, some to one Court and some to another ; so that no-body is to be committed to Goal by the King's special Command : And HUSSEY, Chief Justice in 1. Henry VII. fol. 4. saith, that Sir John Markham told Edward the IV. he could not commit a Man ; because, if the King did wrong, the Party could not have his Action.

It is evident, then, that the Power of Commitment exercis'd by the two Houses of Parliament, by the Courts of Justice, by the Judges, Magistrates, and all the Officers concern'd in the Administration of Justice, cannot be measured out to them by the King in such portions as he thinks fit : it is a Power with which they are invested by Law, and is incident to their respective Courts and Offices.

In order to shew a nearer resemblance of our Constitution here to that of our Mother-Country, and to bring the matter home to our Subject, we will (if you please) review and compare the power of Commitment which is exercis'd by the different orders and powers of government here and in England. Here then, as in England, it has been already said that every Court of Justice has a power of committing for contempt, a power which seems to be inseparably annex'd to every Court as essential to the support of its lawful authority. Here too as in England, the commitments of the inferior Courts may be examined, and discharged if irregular, by the Court of King's Bench, upon an HABEAS CORPUS, by the common Law ; and by the Chancellor, or any of the Judges, by the Statute
of

of 31. Charles II. But the commitments of the Grand Court, or court of Chancery, cannot be question'd, controul'd or discharg'd by any inferior Jurisdiction: the inconsistency and absurdity of an inferior Court's controuling a superior one, would not be endured in any other country, I believe, but this.

THE Law of England, ever jealous and careful of the Liberty, as well as the Life and Property of the Subject, supposing that a Jurisdiction in these Courts without some check or controul, or some power to watch over them might be dangerous, and leave them at Liberty to overflow their bounds, and in the end overwhelm the Constitution, has wisely provided against this danger by subjecting all their proceedings to the inspection of Parliament: And it is for this reason the Court of Parliament and each House of Parliament enjoys, in the order of the British Government a rank superior to every Court of Justice and a power over them: and every Court in the Kingdom is amenable, and answerable for their Conduct to both or either of the Houses of Parliament. It is for the security of the People therefore, in their Lives, Liberties and Properties, that the two Houses of Parliament have power over the Courts of Justice: and it is from motives of wisdom and public good that the commitments of either House, (as I have shewn) are not to be question'd by any other Jurisdiction. The House of Commons is the Grand Inquest of the nation; it is therefore in a more especial manner the duty of that House to enquire into all abuses of power, and all public grievances, and to get them redress'd.

It is indeed from their Representatives chiefly that the people can hope for, or expect, a candid enquiry into and a thorough redress of grievances. The History of England gives us many instances of the corruption of Judges and of their readiness, either from motives of corruption, or from a servile and criminal obedience to the dictates of a Court to pervert those Laws to the destruction of Liberty and Property; which were intended for a nobler and better purpose, the security of both. But History also shews us the salutary effects of the superior power of the House of Commons; and that it has at all times stood in the gap against oppression. Many are the instances which occur in the English History of Judges brought to Justice and to condign punishment by the Power of that House: some Judges have been hang'd, some banished and some have been degraded, fined and imprison'd. In James the Ist's. Time the Great Lord Chancellor, Bacon, one of the greatest and wisest men the World ever saw, was yet so corrupt in the administration of justice, that he was impeach'd by the Commons, and upon conviction sentenced to be degraded from his dignity, Fined, Imprisoned and stript of the Office he had abused. And so lately as the Reign of George the Ist. the Lord Chancellor Macclesfield was for the same Crime render'd incapable of his Office, Fined and Imprisoned. Every man of candour, who has any knowledge of the History and of the Laws and Constitution of England, must own that the Power, the Authority. and Superiority over Ministers and Courts of justice which the Constitution gives to the House of Commons, has been, and ever must be the chief Bulwark of the Constitution; and that without it, the Life, Liberty, and Property of the Subject would have no Security against the oppression of Ministers, and the corruption of Judges.

THIS is the Law and the Constitution of England, the Birthright and Inheritance of every Briton, and the only form of Government to which he can be made Subject without his consent. These are the Rights which our Fathers brought with them to this Island: Rights which no Earthly Power can divest us of without our consent, whilst Great Britain continues a Free and Independent Kingdom, and her Children retain any degree of Love for the Laws of England and for Civil Liberty.

To say that our Rights and Possessions are secured to us by the Laws of England and yet at the same time that we have no title to those Powers and Privileges without which they cannot subsist, is downright Impudent Nonsense; it is mocking us with the sound of Liberty and Property, and Robbing us of the substance.

If we are Freemen, and not Slaves; our Liberties are as much our Inheritance, as our Lands. If our Lives, Liberties, and Properties are not our Inheritance, secured to us by the same Laws, determined by the same jurisdictions, and fenced in and defended by the same Constitution, as the Wisdom of our Ancestors found it necessary to Establish for the preservation of these Blessings in our Mother Country; then are the subjects of the Colonies NOT Freemen but Slaves; not the Free Subjects, but the Outcasts of Britain; possessing these invaluable Blessings only as Tenants at Will, the most uncertain and wretched of all Tenures; and liable to be dispossessed by the hand of Power.

LORD Chief Justice Cooke, (that Oracle of Law) being a Member of the House of Commons in the Reign of Charles the I. said in a Conference with the Lords. "For a Freeman to be Tenant AT WILL of his Liberty; I will never agree to it" It is a Tenure not to be found in all Littleton. And there is certainly no other distinction between Freedom and Slavery, but that a Freeman has his Life, his Liberty, and his Property secured to him by known Laws to which he has given his consent; and that he cannot be divested of any Right but by a Judgment of a Lawful Court, and for Breach of some Law of the Land: Whereas a Slave holds every thing at the Pleasure of his Master, and has no Law but the Will of his Tyrant. Can there be a more Slavish or Infamous Position, than that we have no Constitution in the Colonies, but what the King is pleased to give us? And is it possible that, among a People who stile themselves Britons, Men should be suffer'd, or listened to with any patience, who have the Effrontery to own maxims and to propogate Doctrines so subversive of every thing that should be dear to a Briton! Were it possible to repress an Honest Indignation at the degeneracy of these Men; it would be pleasant to consider the Inconsistencies and Contradictions they are led into in their Arguments and Endeavours to prove us Slaves. For Example, They will tell you gravely that the Subjects in the Colonies are Freemen; that they hold their Lands, their Lives, and Liberties under the security of the Laws of England; that they have a Right to Justice Administred in the same Forms, and by the same Rules as in England; and that their Courts where Justice is Administred derive their Existence from the same source, have the same Powers, and stand in the same degree of Subordination to one another, as the Courts of Justice do in England. But they assert that the Representative Body of the People, a Court by the Laws of England superior in Rank, in Power, and Importance to all those Courts, is in this Colony (by a Strange inversion of the Constitution) placed below them: that is in plain English. "You are Freemen, intitled to all the Rights and Privileges of Englishmen, but your Constitution wants the only Fence, which in your Mother Country secures to the Subject those invaluable Blessings." Can there, in the Name of God, any Honest reason be given why the order of things in this Colony ought to be thus inverted? or why the Representatives of the People should be so degraded in our Constitution from the Rank which they hold in that of our Mother Country?

I AM not so absurd as to say, or imagine that the Assembly of this little Colony is any way equal in Dignity or extent of Power, to the House of Commons. The House of Commons represent the People of a mighty Kingdom, of which this Colony is but a part; the House of Commons have for their Object the whole British Empire, its Interests, and Connexions with all the World. Our Assembly Acts in a much narrower Field; its O-

perations,

perations, confined and circumscribed within the Limits of this little Community, extend not to any other part of the King's Dominions; and its power, like that of all other Bodies thro' the British Empire, is subordinate to that of a British Legislature, which is and must in the nature of Things, be supreme over all the British Dominions. I contend not for an Equality of the Colonies with the mother Country; they are, and in the nature of Things must be, dependant upon it. But I contend for a Right in the Subjects of this and every Colony to the Laws of England; that this Colony has a Constitution, and a Form of Government resembling as nearly, perhaps, as possible, that of England; That it has enjoyed this Constitution ever since Civil Government was first established here; and that no Form of Government repugnant to the English Constitution can be imposed upon us against our Consent, without actually degrading us from the Rank of Englishmen, and reducing us to a Condition of Slavery. Upon this foundation, then, I do affirm that the House of Assembly of Jamaica does, and must hold the same Rank in our little System, as the House of Commons does in that of our Mother Country; that the Court of Chancery and all the Courts of Justice stand in the same degree of Subordination and Inferiority to it, as those Courts in England do to the House of Commons; that it is necessary for the publick Security that this Court should have a power to question the proceedings, repress the Exorbitancies and restrain the Excesses of all other Courts; and that this Power cannot be preserved, if the Court of Chancery or any inferior Court is allowed to examine or discharge the Commitments, or controul the Jurisdiction of the Assembly in Cases of Privilege.

The Wisdom and Experience of our Ancestors in England taught them that it was necessary for the Security of Life, Liberty, and Property, that there should be a power somewhere in the Constitution to controul the Courts of Justice; and they did most wisely place the power of controuling them where alone it could be securely placed, in the Parliament, in each House of Parliament, in the People by their Representatives. What Reason or Justice is there in denying the People's Representatives here the same Salutory Power of Controul? Is there less danger to be apprehended from the Oppressions and Injustice of those Courts here, than in England? Is the Chancellor, are the Judges here likely to be more learned, more free, more independant, more virtuous, and less corrupt, than the Lord High Chancellor and the Judges in England? Or are the people less to be trusted with righting themselves than those of England? I think none of these Things will be asserted: I am sure they cannot be maintained. I think the danger that would result to this Country from the want of such a Power in the Assembly still greater, undeniably greater, than it would be in England, from the weakness of our Condition, which in many Instances admits not of a Constitution so perfect and so capable of giving publick Security.

LET me explain myself. It has been shewn before, that our Legislature here wants in its Two First Branches (from the dependant condition of the Governor and Council) a good deal of that Freedom, which is necessary to the Legislature of a Free Country; and that on this account our Constitution is defective in point of Legislature, those Two Branches not preserving by any means so near a Resemblance to the parts of a British Legislature which they stand for here, as the Assembly does. This is a defect in our Constitution which cannot from the nature of things be intirely remedied; for we can never expect the Happiness of the Kings Personal presence amongst us, nor have we any Class of Men distinguish'd from the People by inherent Honours. But there are defects, IN POINT OF JUDICATURE, more important than these, and more dangerous to Liberty; and which may and therefore, I hope, will one time or other be remedied. In England Judges hold their Places QUAM DIU SE BENE GESSERINT: here they hold them upon the slippery and un-

certain Tenure of DURANTE BENE PLACITO ; and they are put in and displaced at a Governor's Pleasure. In England the King cannot exercise a Judicial Office himself ; for, tho' Justice and Judgment flow from him, yet he dispenses them by his Ministers, and has committed all his judicial power to different Courts. And it is highly necessary for his People's safety that he should do so : for (as Montesquieu, who has investigated the nature of Government, and seems to be perfectly Master of the Subject, says upon the Constitution of England) there can be no Liberty, where the Judicature is not separated from the Legislative and Executive Powers. His words are, " Il n'y a Point encore de Liberté, si la Puissance de juger n'est pas séparée de la Puissance législative ; & de l'exécutrice. Si elle étoit jointe à la Puissance législative, le pouvoir sur la Vie & la Liberté des Citoyens seroit arbitraire ; car le Juge seroit Législateur. Si elle étoit jointe à la Puissance exécutrice, Le Juge pourroit avoir la force d'un Oppresseur." *There is no Liberty, if the Power of Judging be not separated from the Legislative and Executive Powers. Were it join'd with the Legislative, the Life and Liberty of the Subject would be exposed to Arbitrary controul ; for the Judge would be then the Legislator. If ere it join'd to the Executive Power, the Judge might behave with all the violence of an Oppressor.*

HERE the Governor, who exercises the Executive and a share of the Legislative Power, holds and exercises also two of the most considerable Judicial Offices ; for he is CHANCELLOR and he is ORDINARY : Jurisdictions, which in the course of a very few Years bring the greatest share of the Property of this Country to his Determinations. As Judge of these Courts, then, and by the Influence he may acquire over those of all the others, the Governor is vested with a very Unconstitutional Power : a Power which puts the Lives, Liberties and Properties, of the King's Subjects here too much in his Mercy ; and which would leave them no Security for any thing, if the Courts of Justice, particularly those in which he presides, were not Subject to the Inspection of, and Subordinate and amenable to, the Representatives of the People ; as they are in England.

OUR present Governor is said to possess, together with the most Amiable private Qualities, a great deal of Learning, a very extensive Knowledge of the Constitution of Britain, long Experience and Habitudes in Business, and very Singular Talents for Government. I am ready to allow His Excellency all the good Qualities he possesses. If we could be always sure of good Governors, to contend for Privilege were but Vanity, perhaps, and Folly. But as the same God, who in his Mercy gives Wise and Religious and Just Governors, may also in his displeasure, and for our Sins, permit Hypocrites and Tyrants to Rule over us ; We should not yield to any illegal, or unconstitutional Act of a Good Governor, which may be drawn into precedent, and made an oppressive use of in the time of a bad One.

SUCH, I think, was our Chancellor's late discharge of a Commitment by the Assembly, as well as the Record of his Judgment upon that Occasion : a Record, which does avowedly subject the Jurisdiction and Power of Commitment of that House to the Judgment of an Inferior Court, and which if suffer'd to stand, most effectually disarms the Assembly and consequently leaves the People without any Protection against the Oppression and Injustice of Courts, or the Corruption, the Rapacity and Iniquity of future Governors. To illustrate this, give me leave to suppose a very possible Case. Suppose the Day arrived then, when our present Governor shall be recall'd : Suppose his Successor already in possession of his Government ; and suppose him a Man every way the reverse of this ; Poor, Needy, and Rapacious ; depending for his support upon some Powerful Minister ; who, having subsisted him for the former part of his Life, will be ready to support him in his Government against the Complaint of any injured Man, in order to prevent his becoming again a Burthen

then

then upon him. Suppose him in short sent here to fill his Bags, and perhaps to execute the Vengeance of a Ministry upon this unhappy Colony, for having in some instances opposed their Will and Pleasure.

He begins his Administration with new modelling the Courts of Justice and disposing them for a Blind Obedience to his Will. He displaces the Judges, and fills the Bench with such Men as he can depend upon. He displaces the Attorney General, and puts a Man in that Office exactly fitted for his purpose, and Obsequious to his Commands. Every thing thus prepared, the Scene Opens, and Oppression of every kind, and from every quarter is let loose upon the People. The Patent Officers, their Deputies, and even their Deputies Deputies (for some time past very impatiently kept within bounds by his Majesty's Gracious Proclamation, by the Integrity of the Governor, the Power of the Assembly, and the Justice of the Courts) now resume their Spirits: and (the Assembly disarm'd, the Tyrant brib'd, the Proclamation forgotten, the Courts of Justice secured, and all obstacles remov'd) they practice every kind of exaction with Impunity; and like a Torrent that has for some time been withheld, overflow the Land and leave every where marks of their Rage and Violence. In the Courts of Law all is Injustice and Oppression; the Guilty are screen'd from Punishment, by *NOLLE PROSEQUI*: the Innocent are harass'd by Informations; Juries are pack'd; Men are convicted of Crimes not Committed, and upon Laws not violated; and obliged to give up a great part of their substance, in order to purchase a quiet Enjoyment of the Remainder; to purchase a Temporary Exemption from Punishment, or to preserve a paltry Existence.

BUT, bad and wretched as is the Condition of the Subject in these Courts, it is worse as you go higher, *PROCLAMATION A JOVE, PROCLAMATION A FULMINE*. Take a view of the Courts where the Tyrant presides in person; and you will find that Corruption, Injustice, Rapine and Oppression know no Bounds, where Judicature is uncontrouled. Here the Law of the Land is trampled upon, and INSTRUCTIONS are brought to supply its Place. Here, in Violation of *MAGNA CHARTA* Justice is Sold; it is delayed by an unreasonable protracting of Causes; it is denied by discouraging Appeals from the inferior Courts, and refusing them in his own. Under these discouragements Commerce languishes for some Time, and then forsakes us: the Merchants quit the Country, and the Ships do not frequent it; Money is scarce; the Planter's produce lies on his Hands, an useless Drugg; and the necessaries of Life and the Implements of Industry are furnished upon the most exorbitant Terms; exorbitant in proportion to the uncertainty of Payment.

In this extremity what Relief has the wretched Subject? His Majesty's Ears, it is true, are ever open to the Complaints of his People, and his Royal Heart is graciously disposed to relieve them; but alas! how few of the wretched people will be capable of applying for this Relief? Some will be deterr'd by Threats, and the dread of that unlimited power which hangs over them: many more will absolutely be disabled by Poverty; and the few, who may have this Remedy within their Reach, will be those who have been least oppress'd, and who therefore least deserve Compassion.

At last the Occasions of Government, or perhaps, an order from Home, make it necessary to call an Assembly. Hope is the Companion, and too often the only Relief of the unhappy, who are ever prone to entertain it, upon the slightest Grounds. These wretched People then begin to flatter themselves with hopes of Relief from their Representatives, from that Body, which was wont to shelter them against all Oppression. Fondly imagining this Circumstance to be a signal, and a forerunner of returning Liberty, they joyfully hail the happy Omen, and expect the meeting with Eagerness and Impatience. The
Assembly

Assembly met; the unhappy and oppressed People flock in crowds to their Doors; the Fathers of Families, disconsolate Widows, and helpless Orphans, dispossessed of their Properties, groaning under Oppression, and covered with Misery and Want, present themselves at the Bar; set forth their Grievances; and in the most moving Attitudes, and with all the pathetick Eloquence of Distress, implore the Relief and Protection of the House. The House receive their Complaints, and vainly imagining themselves possess'd of their Privileges and Antient Powers, they (according to the practice of their Ancestors) give the redress of these Grievances the first place in their Deliberations. They take the Examinations of the injured, and summon the wicked Instruments of Oppression before them, in order to gain the fullest information about their Oppressions; and, according to their duty, lay the Facts before His Majesty for redress. Here they are stopt, their Dreams vanish, the Criminals refuse to appear before them, and the House is given to understand, that they were called together for the granting of Money and that this (tho' the least and meanest End of their original Institution) is now the only power they have a right to Exercise. In vain do they order the delinquents into Custody; the Chancellor by Virtue of the precedent before him discharges them; and this odious Record now appears to them in its proper Shape, as a most dreadful Instrument of Tyranny and Oppression.

THIS, my Dear Sir, is a Picture of the Miseries we are all liable to; if the Court of Chancery is suffer'd to determine the Privileges and controul the Jurisdiction of the Assembly. Do not think it overcharg'd: it is not drawn from the extravagant Images of an Active Fancy; be assured it is taken from Life; from what has already happen'd, and does now actually exist. If we are to give any Credit to written Accounts of Voyagers, or to the Evidence of those who have been on the spot, it is a faithful Representation of what our Neighbours, the American Spaniards, do at this time endure. Nor is there an Oppression, Injustice or Hardship in all the above Catalogue, which that Unhappy People, have not at times been made to suffer; and all from a Power in their Courts of Justice, which has no Constitutional, or Effectual controul: for where the Judicature of a Country is without some Constitutional check sufficient to keep it within Bounds; I defy any Man to shew me, what security the People of such a Country can have for their Lives, their Liberties, or their Properties. It is true that, were we base enough to part with our defence and give up the Jurisdiction and Privileges of the Assembly; it is not certain, it is perhaps not probable, that all the ill consequences I have enumerated would at once flow from it, and be felt by the present Generation in their utmost severity. But it is probable that some, and possible that all of them might follow: And, whilst such a possibility remains, we are to all Intents and Purposes Slaves, as much as the aforesaid Unhappy Spaniards, or any other Slaves. Our condition in that Case even tho' we do not actually suffer the same Hardships, differing from theirs only as that of a Slave who has an Indulgent Master, differs from his who has a Cruel One; FOR IT IS THE POWER, WHICH ANY MAN HAS OF TAKING MY LIFE, LIBERTY, OR PROPERTY WITHOUT MY CONSENT, THAT CONSTITUTES AND DEFINES SLAVERY. You see, then, the Importance of the Present Contest: And of how much Consequence it is, especially to us who are fixed to the soil; since every thing that an Englishman holds Dear, is stak'd upon the issue of it.

IN a Contest where the Struggle is for ALL, it would be surprizing to find any one so Foolish, or so Abandon'd, as to contend for giving up the Point; did not History (to Humble the Pride of Man) shew us, that all Ages, and all Countries, have produced some so stupid as to sell their Birthright for a Mess of Pottage, so base and degenerate as to court the Yoke. And Historical Justice has in Vain deliver'd these wretches down to Posterity, as Criminals, in the most odious Colours; since the World still continues to produce such Monsters.

Monsters. The number, indeed, of Men amongst us, who contend for Slavery, is, (thank God) small: and some of these, no one is sorry to find engag'd against their Country. They have very happily and properly lifted in such a Cause; since the Immorality of their Characters would disgrace a better. But there are others, on the same side, of a very different stamp, Men who wander not from the right way intentionally, but as having been misled. These every Good Man is concern'd for, and wishes to be reclaim'd; since it is for the Public Good that all Honest Men should think alike, and act together, in a matter of such Public Concern.

I THINK it impossible such Men should continue in their Errors; if they would only take the trouble of examining by the light of their own Reason, the Arguments which are made use of to persuade, to frighten us out of our Freedom; Arguments that affront our Spirit, and insult our Understandings. We are told, for instance, in the Public Papers, we are told it in private, that if the Assembly does not proceed to Business, (their Privileges unvindicated;) we shall loose our Legislature. We are told further that his Majesty in Council has determined against us, and has given us to understand that if we insist on our Privileges, he shall be under a necessity of applying to his Parliament, to make Laws for us.

I HAVE seen no such Order of Council; and the Person who is said to report, that there is such an One, deserves so little Credit that I will not believe it, before I have better Authority. Till then I shall consider it as an Impudent Calumny, calculated for the dirty purpose of serving some Turn, and tending to cast a reflection upon the Justice of the Most Gracious and Best of Kings, upon the Integrity of his Ministers, and the Lords of His Majesty's Privy Council, and upon the Honour and Independence of a British Parliament. If I do see such an Order, I cannot resist demonstration, but I shall consider it as an abuse of his Majesty's Name and Authority, by his Ministers, and such an attack upon the People of this Colony, as proclaims them Slaves.

By the Law of Eng'land the King can do no wrong, but the Law supposes his Ministers may; and they are accountable to their Country, for every wrong or oppressive Act that is done in his Majesty's Name; and every individual, wrong'd by their Act, has a right to complain, and to seek a Lawful redress. We have a King upon the Throne, as incapable, from the Graciousness of his Disposition and the Natural Goodness of his Heart, of doing any wrong, as he is supposed by the Law to be in his Political Capacity; a King, who Glories in being Born a Briton. Every good Subject ought; every Subject in this Colony, I am sure, would, shed the last drop of his Blood, in Defence of his Majesty's Crown, and to preserve it in his Royal Line.

To his Ministers, every good Subject owes Respect, while they act in their several Departments for the Public Good. When they cease to do so; they forfeit all Title to Respect.

To a British Parliament, every Subject throughout the British Dominion, owes the highest Respect and Reverence, and to their Laws Obedience.

RESOLUTIONS of his Majesty in Council, are not Laws: and if they are against Law, no Subject is obliged to obey them. If such a Resolution as is mentioned, were to be procured in the Case of the meanest Corporation in England; if, condemn'd unheard, they were to be told, that if they did not yield to the dictates of a Minister, in a point of the last consequence to their Freedom; his Majesty would apply to Parliament in order to disfranchise

enize them; what, do you think, would in this Case, be the Consequence? Do you think the meanest Corporation in England would submit to such an Outrage? Or would any Minister be safe in committing it? I believe not. I believe his Majesty would resent it, as an abuse of his Name and Authority: the Parliament would, I believe, consider it, as a daring attempt to degrade them from the Glorious Title of Protectors of the British Liberty, to the base purposes of Oppression.

UNHAPPY Jamaica then! Is it so fallen as to become of less Consideration, than the meanest Corporation in Britain? Have we deserv'd so ill of the Nation as to be thrown out of the Protection of the Laws, stript of our Privileges, and left to the mercy of a Ministry? I will never think so. Let us not think so ill of his Majesty and of his Parliament. They do not deserve it of us. Let us not think so desperately of ourselves, we do not deserve so ill of them.

THE Assembly of Jamaica have made no violent, no oppressive use of their Privileges. An attack was made on their Privileges, as wanton, undeserved, and unprovoked, as it was irregular, and dangerous to Liberty. It is invidiously said that a Power in the Assembly of Commitment without controul, would be very dangerous to Liberty. It is not pretended that the Assembly have such a power, without controul; there is no such thing in the English Constitution. The Courts of Justice are controul'd by one another, according to their different ranks: and the House of Commons as their superior in rank, controuls them all. But the House of Commons is also subject to a constitutional controul, when they exceed their power or stretch it to the purposes of Oppression. If they are Oppressing the people, the King has a power of sending them by a dissolution, back to the people; and those they have oppress'd, will not again trust them, with the power they have abus'd.

IN our Constitution, there is no such thing as a wrong without a remedy. But then you must apply to the proper jurisdiction. If you do not; you cannot expect a remedy. If a man, for instance, was to insist upon the Officer of the Crown's indicting his obligor in a Bond, because he did not pay his obligation to the day; would he not be laugh'd at? Would any Officer bring such an Indictment? If a Man instead of indicting one for Killing his Brother, were to file a Bill in Chancery; could he reasonably complain, if his Bill was dismissed? If the Obligee in the Bond, or he who had lost his Brother, had each of them applied to a proper Jurisdiction; they would have been redress'd. As they did not do so, could they reasonably arraign the Justice of the Government; or with any colour say they were denied Justice? so Mr Cook and M^r Neil chose to apply to the Chancellor, in order to be releas'd from a Commitment of the Assembly; they applied to an incompetent Jurisdiction; a Jurisdiction that could not constitutionally release them; and altho' the Assembly had even Committed them, UNJUSTLY; yet, they could not complain, if the Chancellor had remanded them; because they had a remedy, but would not apply to the proper place for it.

THUS you see, the Attack in this Instance was irregular and unconstitutional. It was wanton, because these Men ought to have gone first by Petition to the Assembly, where they would have been most certainly relieved. But this it seems, was too humiliating for Men of their Figure; and they disdain'd it.

IT was unprovok'd and undeserved; because the Assembly was going on with Business in a regular Course, and did not in this go out of their way; and because there never was nor ever will be, an Assembly better dispos'd to support Administration.

If the Governor thought the Assembly were oppressing the Men; yet, as CHANCELLOR, he ought to have remanded them; tho' he might in this Case have dissolved the Assembly, as Governor; and if he had done so, the Privileges of the Assembly would not have been infring'd, the Men would have been releas'd, and he would not have exercis'd a Power unconstitutional and dangerous to Liberty, and would therefore have given no reasonable Cause of Offence.

THE Fate and Condition of Ireland, should be a Document and Warning to all the Colonies. Ireland, inhabited and possessed by the Children of England and of those who conquered it, was once free. It is not so now. An artful Governor (Sir Edward Poynings) sent to them, perhaps, for that purpose by Henry VII. cheated them out of their Liberties, that is, into an Act of Parliament that fixed a Yoke about the Nation, which their Posterity have been ever since groaning under the weight of; and the Irish enjoy at this day, less Liberty than any other Subjects in the British Dominions. This could not have happened without their Consent. Let any man look over the List of Pensions upon the Irish Establishment, published not long since, and he will see, what a Milch-cow that unhappy Kingdom, with such a Curb in its mouth, is to a British Ministry.

It is this honourable Badge, which Ministers have been long endeavouring to adorn the Colonies with. In Charles the II^{ds}. time the Earl of Carlisle was sent hither our Governor, and brought with him a Body of Laws, fashioned after those of Ireland, with Instructions to get them passed here. But our Ancestors rejected them with Indignation; no Threats could frighten, no Bribes could corrupt, no Arts or Arguments could persuade them to consent to Laws that would enslave posterity; and therefore we are free.

THE Endeavours of successive Ministers were continued for this purpose, until the Year 1728, when King George the II^d gave his Royal Assent most graciously to an Act, commonly called the Revenue Act, which put an end to the Contest; for in that Act it is declared, "That all such Laws and Statutes of England as have been at any Time, esteemed, introduced, used, accepted or received as Laws in this Island, shall be and are hereby declared to be and continue, Laws of this His Majesty's Island of Jamaica, FOR EVER.

AND His Majesty's consent to this Law which may be called our great Charter, was purchased by granting therein, a perpetual Revenue to his Majesty and his Successors. By this Law we are precisely intitled to all such Laws of England, as have ever been used here. Now our Court of Assembly, as appears by their minutes, have ever governed themselves, and exerted their Jurisdiction in Cases of Privilege, by the Law of Parliament.

THE Law of Parliament has ever been allowed, by all Lawyers and Judges, to be part of the Law of England; I would therefore be glad to hear by what Quirk or Subtlety, it could be distinguished in our Case, as NO LAW OF ENGLAND.

HAVE our Ancestors, in the Infancy of this Colony, in the Arbitrary Reigns of a Charles and a James, and when Prerogative was unlimited, and Liberty undefined, thus Nobly withstood every attempt to enslave us? And shall the present Generation, now when Liberty is establish'd, and Prerogative limited, do less for Posterity? God forbid! The conjuncture is, most certainly, critical; our Danger great; and the Power we have to contend with formidable. But the Spirits of a brave People should rise in proportion to their Danger. It is the part of Slaves to submit to Oppression, it is the part of Cowards to shrink at the appearance of Danger. We are not Slaves, we cannot be made so, without
our

our consent, as long as Great Britain is Free. If we suffer ourselves to be frightned out of our Liberties; we are Cowards: if we give them up from any other motives; we are traitors; Traitors to the present Generation, Traitors to Posterity. But if, after having done our utmost, they should be wrested from us by a stronger Power; every Man who has done his Duty will have the Testimony of a Good Conscience for his Comforter; and *MENS SIBI CONSCIA RECTI*, the greatest Comfort of a Good Man, will be Ours. His Majesty and every Honest Man in Britain will think the better of us, for shewing a Manly resolution and constancy, in defence of our Privileges: His Majesty will think the better of our Loyalty, for our Love of Liberty; for his Throne is founded on Liberty, and it is his greatest Glory to Reign over a Brave, a Loyal and a Free People.

To Conclude, we have received our Liberties as an Inheritance from our Fathers, and we are bound to transmit them to our Children, unimpair'd. If we do so, we shall do our Duty; if we do otherwise, we shall act with the basest Treachery and Impiety: we shall deservedly incur the Censure, the Contempt, the Abhorrence of all Honest Men, and intitle ourselves to the Curses of Posterity.

I am, &c.

Jamaica, August 10th, 1765.

P. S. I know of no Power exercis'd by the House of Commons for redressing Grievances, or bringing Public Offenders to Justice, which the Assembly is incapable of. I know of none which it has not exercis'd at times, except that of Impeachment; and this has been forborn, not from any Incapacity in that Body, but from a defect in the Power of the Council. An Impeachment by the House of Commons in England, must be tried in the House of Lords; it being below the Dignity of the Commons, to appear as Prosecutors at the Bar of any Inferior Court.

THE Council or Upper House here, have no Jurisdiction in Criminal Cases, and the Assembly being also above prosecuting in the Inferior Courts, do therefore not Impeach, only because there is no Judicature which they can in this Case with Dignity resort to: But the Assemblies of Jamaica have always been used to enquire into the Abuses and Corruptions of Office, the obstructions to Public Justice, and the complaints of Subjects oppress'd by the Hand of Power, and to bring the Offenders in such Cases to Justice. If an Offender be in any Station below the Governor, their Custom has been to lay the Evidences of his Guilt before his Excellency, and by address desire, he may be Prosecuted and Dismiss'd from the Office he has abus'd. If the oppression comes from any of the Courts or Offices which the Governor holds, they seek for redress, by an application in the same manner to his Majesty; insomuch that Public Officers and Magistrates of all Ranks, from the Justice of the Peace, up to the Chief Justice, the Members of his Majesty's Council and the Governor, have at times been made to feel the weight of this Authority, and to suffer for their Excesses; so that, tho' the Assembly do not Impeach, yet they exercise Powers as Constitutional, and every way as effectual to protect the Subject, and bring the Guilty to Punishment.

AND I appeal to every Man who has any Knowledge of the History and Constitution of this Colony, whether, the Salutary and frequent Exercises of these Powers, have not been our main Defence against Oppression, and our best Security against the ill Effects of that formidable and unconstitutional share of Power, which our Governors are arm'd with.

F I N I S

A COPY of the Speaker's Warrant, by which Mr. PIERCE COOKE was taken into the Custody of the Messenger of the Assembly, and also a Copy of the Decree of his EXCELLENCY THE CHANCELLOR, by which he was Released, and Discharged, from the Custody of the Messenger.

Jamaica, ff.

Mercurii, 19th Die Decembris 1764.

WHEREAS Mr. PIERCE COOKE was in Custody the last Session of Assembly FOR A BREACH OF THE PRIVILEGES OF THE HOUSE in assisting Richard Thomas Willson in Executing a Writ of Venditioni Exponas on the Coach Horses of JOHN OLYPHANT, ESQUIRE, a Member of the House.

THESE are therefore to Will and Require you to Take into your Custody the Body of the said PIERCE COOKE, and him safely keep until he shall be discharged BY ORDER OF THE HOUSE, and for your so doing this shall be your Warrant. Given under my Hand and Seal the Day and Year above written.

Charles Price, Junior Speaker. ☉

To Edward Bolt, Esq;
Messenger of the Assembly.

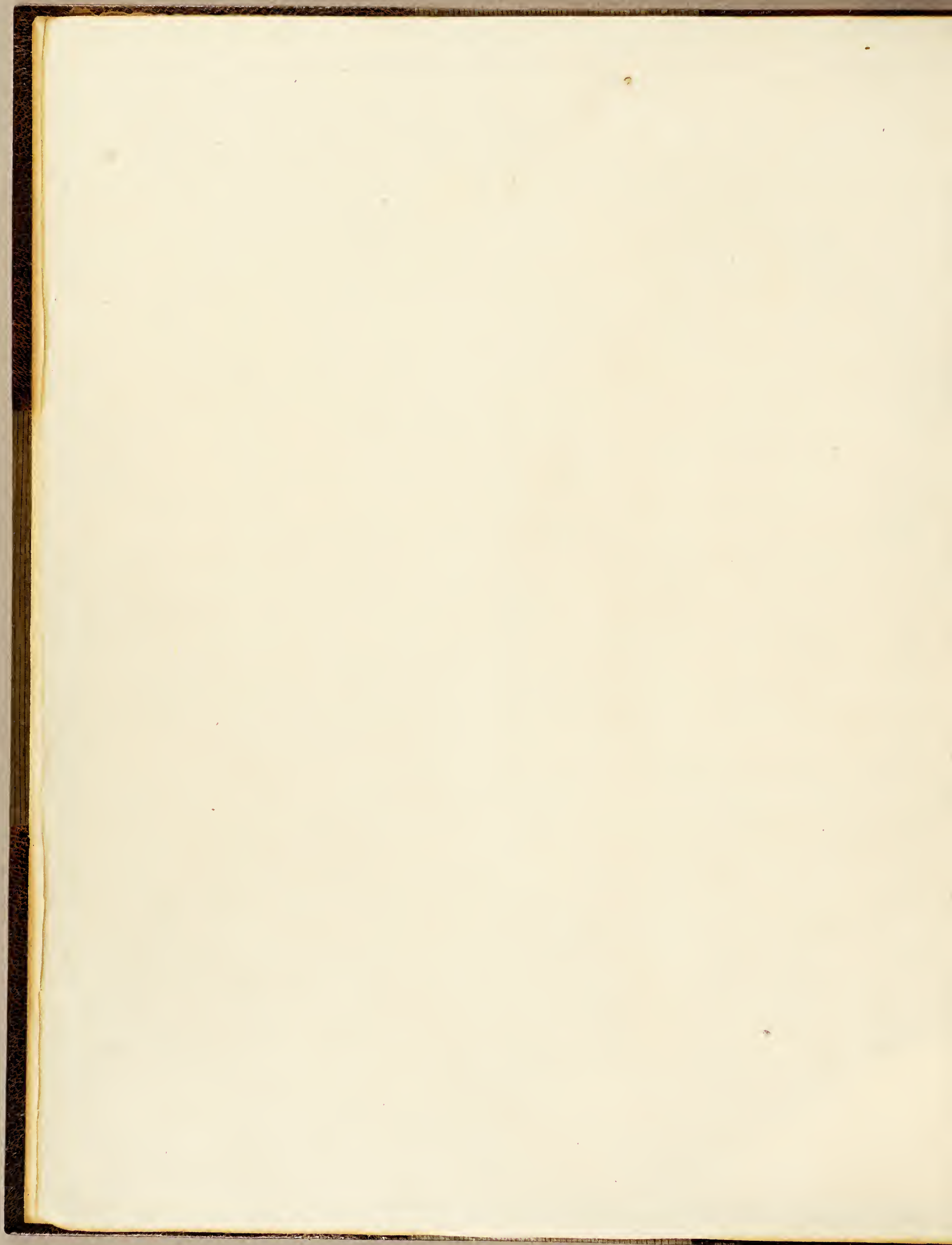
At a High Court of Chancery held at the Town of St. Jago de la Vega,
on Friday the 21st Day of December, 1764.

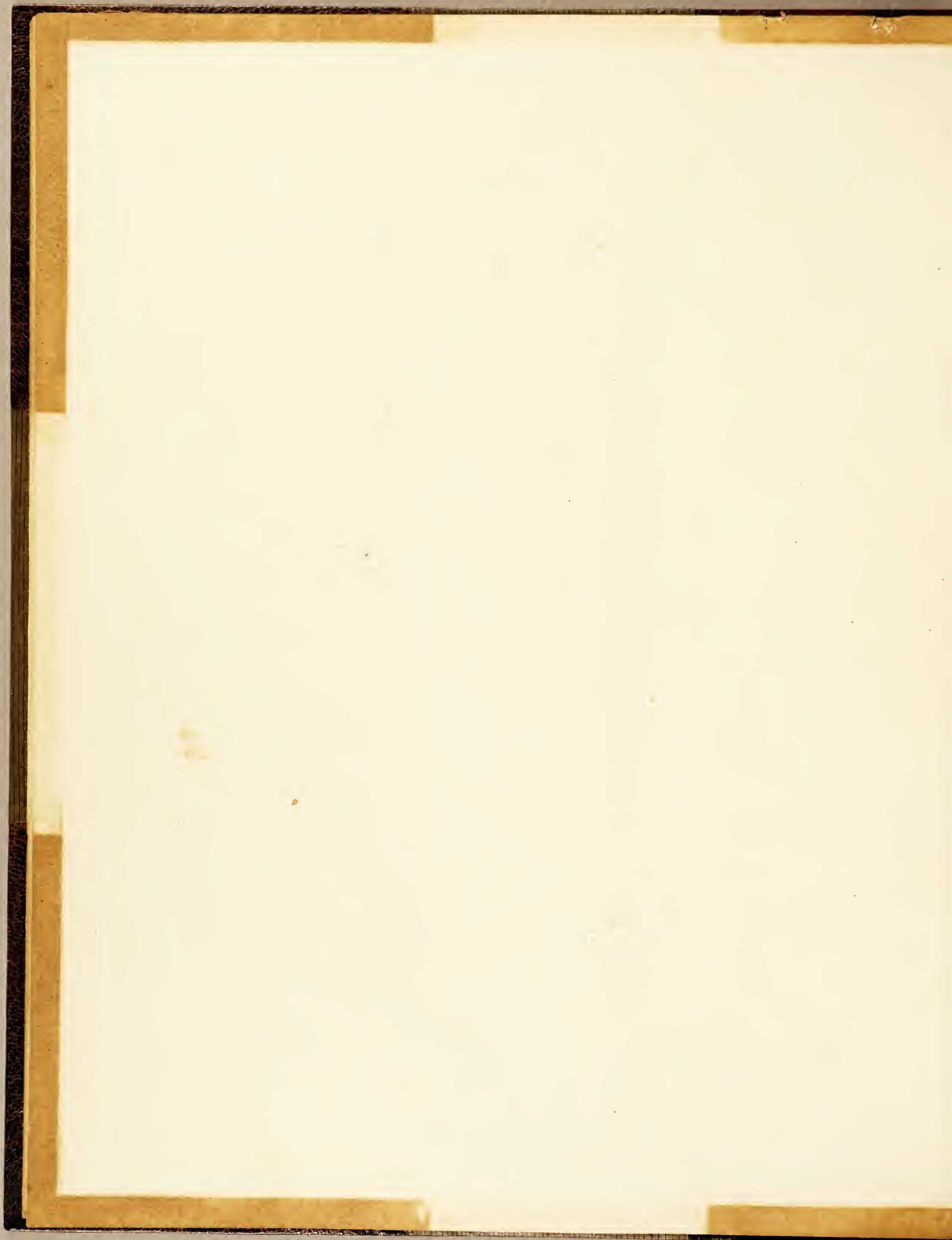
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THE Body of PIERCE COOKE, Gentleman, being this Day brought into Court before HIS EXCELLENCY THE CHANCELLOR, by EDWARD BOLT, Esquire, pursuant to the Order of this Honourable Court made yesterday, upon the Return of the Writ of Habeas Corpus, issued under the Seal of this Court, tested the 20th Day of December Instant, Directed to the said EDWARD BOLT Returnable before HIS EXCELLENCY THE CHANCELLOR Immediate; And upon hearing of what was Alledged by Council ON BEHALF OF THE SAID PIERCE COOKE on the said Return HIS EXCELLENCY THE CHANCELLOR was pleased to declare; That it did not appear to him FROM THE WORDS OF ANY ACT OF PARLIAMENT or OF ANY ACT OF THE GOVERNOR COUNCIL AND ASSEMBLY OF THIS ISLAND or OF HIS MAJESTY'S COMMISSION or INSTRUCTIONS TO HIS EXCELLENCY AS GOVERNOR OF THIS ISLAND or BY ANY OTHER MEANS WHATSOEVER That the Commitment of the said PIERCE COOKE into the Custody of the said EDWARD BOLT IS LEGAL. And HIS EXCELLENCY THE CHANCELLOR was therefore pleased to ORDER ADJUDGE and DECREE And it is hereby ORDERED ADJUDGED and DECREED That the said PIERCE COOKE BE, BY THE AUTHORITY OF THIS COURT RELEASED AND DISCHARGED FROM THE CUSTODY OF THE SAID EDWARD BOLT.

Vera Copia Extur

Geo. Ramfay Reg. Cur. Can.





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